IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5756 OF 2004

Shri Mohan Daulatrao Ingole & anr.... Petitioner

Versus

Shri Shrirang Sadashiv Pattebahadur.. Respondent

& 28 ors.

Mr.S.M.Kamble for Petitioner

Mr.D.B.Patil for Respondent nos. 1 to 15

Mr.F.A.Mulla for Respondent nos. 18,21,24 to 28.

Mr.R.S.Apte for Mr.M.V.Limaye for Respondent nos.

Mr.D.A.Patil AGP for Respondent nos. 16,17,19,20,22, & 29.

CORAM : A.S.OKA, J

DATE: 10th December, 2004

P.C.:

1. On 14th July, 2004 this court issued notice for final disposal at admission stage. Office noting shows that all the respondents have been duly served.

2. The challenge in this petition under Article 227 of the Constitution of India is to the Judgment and order dated 27th April, 2004 passed by the learned Assistant Charity Commissioner, Thane Region, Thane. The said Judgment and Order was passed on an application purporting to be an application under section 41-B of the Bombay Public Trust Act, 1950. The said application was filed by the petitioner no. 1 and respondent nos. 14 to 17 and 22. In the said application, the reliefs claimed are as under :

> " The applicants therefore pray that the Hon. Court would be pleased to initiate immediate enquiries in the matter for obtaining the directions from the Hon. Charity Commissioner to the opponents to carry on the administration of the Trust property by enrolling members of the said society as per the provisions of the Scheme of the Trust and for obtaining such other directions as are deemed proper and necessary for saving the society from mal-administration and

disreputation. It is further prayed that during the pendency of the enquiry no further proceedings be carried out on the basis of or on the strength of membership of 17 persons selected by the M.C. of the Society in its meeting held on 31/8/1990.

. The applicant further pray that for the purposes of the enquiry the opponents be directed to produce before the Hon. Court the original records i.e. original applications of all the 125 persons considered by the M.C. in its meeting held on 31/8/90 minute books of the proceedings of the meeting held on 31/8/90. "

3. An application for interim reliefs was filed alongwith the main application under section 41-B. The said application came to be decided on 30th October, 1990. By the said order, the learned Assistant Charity Comissioner directed that the trustees of the present managing committee of the trust in question will not allow newly admitted 17 members from interfering or participating in the affairs of the trust directly or indirectly till the issue of acceptance and rejection of membership is finaly decided. By the order impugned in this petition the learned Assistant Charity Commissioner partly allowed the main application. He confirmed the decision of the managing committee in its meeting dated 31st August, 1990 by accepting 17 members and rejecting 108 members. The learned Assistant Charity Commissioner has also directed the present managing committee of the trust to hold the elections of the trust as per the directions issued by his learned predecessor vide order dated 18th December, 1998 while deciding Application

[No.6 of 1997.

4. Mr. Kamble learned counsel appearing for the petitioner submitted that the application which was made before the learned Assistant Charity Commissioner was specifically under section 41B of the said Act of 1950. He submitted that on the said application, the learned Assistant Charity Commissioner was expected to hold an inquiry himself or was expected to entrust such an inquiry to an officer authorised under sub-section 1 of section 37 of the said Act of 1950. He submitted that after making the inquiry, a report ought to have been submitted by the learned Assistant Charity Commissioner to the learned Charity

Commissioner. He stated that instead of submitting the report, the learned Assistant Charity Commissioner could have proceeded under section 38 if necessary. He submitted that the order passed by the learned Assistant Charity Commissioner was beyond the scope of powers conferred on him under section 41-B of the said Act of 1950.

5. Mr. D.B.Patil, learned counsel appearing for the respondent nos. 1 to 15 submitted that in fact the application made by the petitioner was in the nature of an application under section 41-A of the said Act of 1950 and therefore the original applicants in fact applied for interim reliefs. He submitted that if the original applicants themselves treated the application as one under section 41-A, the learned Assistant Charity Commissioner was justified in passing the impugned order. He submitted that no interference was called for in the petition under Article 227 of the Constitution of India.

6. Mr. R.S.Apte appearing for the respondent no. 16 submitted that the original applicant have invited the impugned order. He pointed out that the order dated 18th December, 1998 passed in Application No. 6 of 1997 has attained finality and therefore the learned Assistant Charity Commissioner had directed that elections should be held in terms of the said order. He pointed out that in so far petitioner no.2 is concerned, he was not at all party before the Assistant Charity Commissioner. He submitted that the writ petition should not be entertained at the instance of the petitioners. Mr. Patil, learned Assistant Government Pleader has supported the impugned judgment and order.

7. The application which is filed by the original applicant is filed under section 41-B of the said Act of 1950. Even in the interim order dated 30th October, 1990 the learned Assistant Charity Commissioner has proceeded on the footing that the application was under section 41-B. In the first part of the impugned judgment and order itself after observing that the direction can be sought by filing an application under section 41-A, the learned Assistant Commissioner observed that he was unable to understand why the applicant has filed an application under section 41-B of the said Act as the said section 41-B provides for inquiry and investigation and not for directions. He has also noted that his predecessor treated the application as an application under section 41-B and passed the ad interim order.

8. Paragraph no. 14 of the said application indicates that the applicants were seeking inquiry as well as directions to the opponents in the application to enrol 108 members whose applications for membership have been rejected. From the prayer made in paragraph no. 15, it is apparent that a prayer is for holding inquiry and also for obtaining directions. However, Mr. Kamble learned counsel for the petitioner has categorically stated that the application made was under section 41-B of the said Act of 1950. His submission is not controverted any of the original applicants namely respondent nos. 14 to 17 and 22 though the said respondents have been served with the notice. In the circumstances, I will have to proceed on the basis that the application was made under section 41-B of the said Act. It will be necessary to refer to the provisions of section 41-B which reads thus:

> " (1) On receipt of a complaint in writing from any person having interest in respect of any public trust or suo motu the Charity Commissioner or Deputy or Assistant Charity Commissioner may institute an inquiry with regard to charities, or a particular charity or class of charities either generally, or for particular purposes.
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> (2) The officers aforesaid may either hold the inquiry themselves, or entrust such inquiry to the officer authorised under sub-section (1) of section 37.
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> (3) For the purpose of any such inquiry, the officer holding the inquiry may, by notice, require any person to attend at a specified time and place and give evidence or produced documents in his custody or control which relate to any matter in question at the inquiry.
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> (4) For the purpose of any such inquiry, evidence may be taken on oath and the person holding the inquiry may for that purpose administer an oath under the Indian Oaths Act, 1973 or may instead on administering an oath, on solemn affirmatiokn require the person to make and subscribe a declaration of the truth of the matters about which he is examined.
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> (5) The necessary expenses of any person of his attendance to give evidence or produce documents for the purpose of inquiry shall be paid in the manner presacribed.
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> (6) After the completion of the inquiry the person holding the inquiry (not being the Charity Commissioner) shal submit his report to the officer who entrusted such inquiry to him.
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> (7) The Deputy or Assistant Charity Commissioner of the region concerned shall submit his own report or report received by him under this section to the Charity Commissioner or he may proceed under section 38, if necessary or send a copy of the report to the Charity Commissioner with his remarks thereon. The Charity Commissioner may if he is satisfied that there is a prima facie case against the trustees take such steps as are necessary under the provisions of the Act.

(8) The Charity Commissioner may himself also call for the proceedings of any inquiry made under this section for such action as he may thinks fit. "

9. In my view, the provisions of section 41-B are very clear. On an application being made by the original applicants, the Assistant Charity Commissioner could have held an inquiry as contemplated by sub-section 1 of section 41-B. However, the Assistant Charity Commissioner has altogether ignored the limited scope of section 41-B. Without holding an inquiry as contemplated by the section he has delivered a detailed judgment and has given directions. Such an order could not have been passed on an Application under Section 41-B. The learned Judge has noted that the application made was under section 41-B and it was treated as such by his predecessor.

10. In the circumstances, the entire approach of the learned Assistant Charity Commissioner while dealing with an application under section 41-B was erroneous and only on that ground the impugned judgment and order deserves to be quashed and set aside and the application deserves to be remanded to the learned Assistant Charity Commissioner for deciding the same afresh in accordance with section 41-B of the said Act of 1950.

11. Hence, I pass the following order :

(i) The impugned judgment and order dated 27th April, 2004 is quashed and set aside.

(ii) Application No. 4 of 1990 is remanded to the learned Assistant Charity Commissioner Thane Region, Thane for considering the same afresh in the light of the provisions of section 41-B of the Bombay Public Trust Act, 1950.

(iii) While considering the application afresh, the learned Assistant Charity Commissioner will keep in mind the observations made in this judgment.

(iv) All contentions on merits are kept open.

(v) Rule made partly absolute in the above terms with no order as to costs. Parties are directed to appear before the learned Assistant Charity Commissioner on 27th December, 2004 at 11 a.m. for seeking consequential orders.

(vi) Considering the fact that the application is pending for a long time, the Assistant Charity Commissioner is expected to decide the application as expeditiously as possible on or before 30th April, 2005.

(vii) Parties to act upon an authenticated copy of this order.

A.S.OKA, J